

PROCEDURES FOR REVIEWING AND APPEALING A NOTICE OF DEFICIENCY DETERMINATION

OVERVIEW

A Notice of Deficiency Determination (Notice) results from audits or examinations by the Nebraska Department of Revenue (Department) assessing additional tax, interest, and penalties. The proposed assessment may result from an audit or examination of the taxpayer's books and records, or it may be based upon the best information available to the Department. The Notice may include schedules and work papers that identify the bases for the proposed assessment. If there are any questions concerning the computation of the amount assessed, the Department's position concerning an item which was taxed, or the appeals procedure, please contact the Department.

This information guide is intended to provide an overview. Nothing in this guide supersedes, alters, or otherwise changes any provisions of the Nebraska tax code, regulations, Department rulings, or court decisions.



This information guide may change with updated information or added examples. The Department recommends you do not print this guide. Instead, sign up for the subscription service at www.revenue.ne.gov to get updates on your topics of interest.

DO YOU AGREE WITH THE PROPOSED ASSESSMENT?

If the taxpayer agrees with the proposed assessment as issued, payment of the amount assessed must be made. Generally, the taxpayer and the Department can negotiate a payment agreement if necessary.

- ❖ If the taxpayer has previously been notified that all payments must be by Electronic Funds Transfer (EFT), the amount assessed must also be paid using EFT. To ensure proper processing, it is recommended that this EFT payment not be combined with normal EFT payments.
- ❖ If the taxpayer is not an EFT payor, the payment must be mailed to the Department. To ensure proper processing, a copy of the Notice should be included with your payment.

DO YOU DISAGREE WITH THE PROPOSED ASSESSMENT?

If the taxpayer wishes to dispute the proposed assessment, a timely Petition for Redetermination (Petition) must be filed with the Nebraska Department of Revenue, Legal Section, PO Box 94818, Lincoln, NE 68509-4818. This Petition must be in writing. Although Petitions may be amended to supply some omitted elements, no writing filed with the Department will be recognized as a Petition unless it is sufficient to identify the taxpayer and inform the Department of the taxpayer's intent to protest an identifiable proposed assessment.

An acceptable Petition must be on white, 8 1/2 by 11 inch paper and must:

- ❖ Identify the taxpayer;
- ❖ Identify the proposed assessment being protested;

- ❖ Include a statement or statements describing the reasons you believe one or more items in the proposed assessment are incorrect (where appropriate, the protested items should be identified by their audit work paper page and line numbers);
- ❖ State concisely the action the Department is being requested to take. Usually, this will be a list of the items in the proposed assessment you are asking the Department to remove; and
- ❖ Be in writing and signed by the taxpayer or authorized representative. To be represented by another person, the taxpayer must complete and return a [Power of Attorney, Form 33](#).

Taxpayers are responsible for the timely filing and adequacy of their Petitions.

Due Dates: Below are the number of days within which a taxpayer must file a Petition to be considered timely filed. All dates are from the postmark date of the Notice.

Tax Program	Due Date of Petition
Income Tax, if taxpayer was outside United States	150 days
Income Tax, Sales Tax, Withholding, and all other tax categories not specifically identified here, including Notices to Officers and Members	60 days
Documentary Stamp Tax	30 days
Tobacco Tax	20 days
Drug Tax	10 days
Jeopardy Assessment	10 days

If a Petition is not filed within the applicable 10, 20, 30, 60, or 150-day limitation, the proposed assessment becomes final, and the tax, interest, and penalty is due and payable.

When a proposed assessment is protested, the statutory time restrictions for collection of the assessed tax, interest, and penalty are suspended until a final determination has been made. Once protested, a proposed assessment is not final until an order is issued by the Tax Commissioner.

PENALTY ABATEMENT AND WAIVER OF INTEREST

Penalty. Penalties are assessed in accordance with state law. The Tax Commissioner has discretionary authority to abate all or a portion of the penalty. The taxpayer may request a penalty abatement whether or not the taxpayer has filed a Petition. A [Request for Abatement of Penalty, Form 21](#), is available on the Department's website.

Interest. The Department assesses interest on unpaid taxes as required by statute, and interest continues to accrue until the taxes are paid. The Tax Commissioner has the authority to waive interest in certain instances. See [Revenue Ruling 99-08-3](#). In all cases, interest accrues only on the amount of tax finally determined to be due. An [Application for Abatement of Interest, Form 21A](#), is available on the Department's website.

Interest accrues on the tax portion of the proposed assessment until the taxes are paid. A taxpayer wishing to stop the accrual of interest on the tax portion of a proposed assessment, without giving up the right to contest the proposed assessment, may pay the tax and file a timely Petition protesting the disputed taxes.

PROCEDURE

Representation. Whenever the taxpayer wishes to be represented by another individual, for example an attorney or accountant, the taxpayer must furnish a written authorization for that person to act on the taxpayer's behalf. Representatives may be appointed using a [Form 33](#), or its equivalent. No appointments will be recognized until they are filed with the Department.

Informal Conference. The Legal Section of the Department will acknowledge receiving a Petition in writing. Upon the taxpayer's request, the Legal Section will schedule an informal conference to be held at the Department's Lincoln office. The purpose of the informal conference is to eliminate items from the proposed assessment because of additional information supplied by the taxpayer and to clarify any factual or legal issues in preparation for a formal hearing. In many cases, all issues can be resolved at the informal conference or from information obtained as a result of the informal conference.

If the issues of fact or law raised by the taxpayer's Petition are resolved through informal discussions, the case will be closed using a Motion to Dismiss or a Settlement Stipulation and Order of the Tax Commissioner.

Formal Hearing. If all the issues raised by the taxpayer's Petition are not resolved informally, the case will proceed to a formal hearing before a Hearing Officer. If the case proceeds to a formal hearing, in most instances briefs, motions, or procedures will be required, which constitutes the practice of law. In these cases, taxpayers must either appear on their own behalf or be represented by an attorney.

The Department and the taxpayer will be encouraged to stipulate to the undisputed facts for purposes of the formal hearing. The taxpayer and the Department will also be encouraged to agree upon a statement of the remaining factual and legal issues to be submitted for decision by the Tax Commissioner upon conclusion of the formal hearing. In complex cases, or in cases where agreements are lacking or issues remain undeveloped, the formal hearing may be preceded by a preliminary conference, presided over by the Hearing Officer.

At the formal hearing, both the taxpayer and the Department may present evidence (including the testimony of witnesses, documents, and other exhibits) and arguments bearing upon the issues raised in the Petition. The taxpayer may request that the formal hearing be governed by the rules of evidence applicable in district courts. This request must be made at least three days in advance of the hearing. A verbatim record of the proceedings is made for use in the event of further appeal.

After reviewing the evidence submitted, the Tax Commissioner will issue a written Order deciding all issues submitted at the formal hearing. All proceedings are governed by the [Administrative Procedure Act, Chapter 84, article 9 of the Nebraska Revised Statutes](#).

Appeal of Decision After Formal Hearing. If the taxpayer disagrees with the Order, they may appeal the decision to the district court within 30 days from the postmark date of the Tax Commissioner's Order. Any appeal must be filed with the clerk of the appropriate district court.

The district court will review the Tax Commissioner's Order on the basis of the record of the proceedings within the Department. Neither party may introduce additional evidence in the course of an appeal, and are bound by the evidentiary record made at the formal hearing.

If an appeal is not filed within the required period, the Order becomes final. Any tax, interest, or penalty is then due and payable, and the assessment will be collected by the Department if not paid.

[Nebraska Department of Revenue Refund, Protest, and Appeal Process Flowchart](#)

RESOURCE LIST

- ❖ [Administrative Procedure Act, Chapter 84, article 9 of the Nebraska Revised Statutes](#)
- ❖ [Neb. Rev. Stat. §§ 84-913 through 84-919](#)
- ❖ [Nebraska Practice and Procedure Regulations, Title 316, Chapter 33](#)
- ❖ [350, Neb. Admin. R. & Regs. 52 \(2009\)](#)

www.revenue.ne.gov
402-471-2971

Nebraska Department of Revenue, Legal Section, PO Box 94818, Lincoln, NE 68509-4818